

असाधारण

EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (iii)

PART II—Section 3—Sub-section (iii) प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं. 12] नई दिल्ली, सोमवार, अप्रैल 13, 2015/चैत्र 23, 1937 No. 12] NEW DELHI, MONDAY, APRIL 13, 2015/CHAITRA 23, 1937

भारत निर्वाचन आयोग

अधिसूचना

नई दिल्ली, 24 मार्च, 2015

आ.अ.21(अ).— लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 (क) के अनुसरण में, निर्वाचन आयोग 2014 की निर्वाचन याचिका सं. 4 में केरल उच्च न्यायालय के आदेश दिनांक 17.12.2014 को एतहारा प्रकाशित करता है।

(निर्णय अधिसूचना के अंग्रेजी भाग में छपा है)

[सं. 82/केरल-लोक सभा/4/2014]

आदेश से.

तपस कुमार, वरिष्ठ प्रधान सचिव

ELECTION COMMISSION OF INDIA NOTIFICATION

New Delhi, the 24th March, 2015

O. N. 21(E).— In pursuance of section 106 (a) of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the order of the High Court of Kerala dated 17.12.2014 in Election Petition No. 4 of 2014.

1676 GI/2015 (1)

[CR]

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

WEDNESDAY, THE 17TH DAY OF DECEMBER 2014/26TH AGRAHAYANA, 1936

El.Pet..No. 4 of 2014

P.A. AZIZ, AGED 67 YEARS, S/O.P.A. ALIYAR, ADVOCATE, PALATHINKAL HOUSE, SUBASH CHANDRABOSE ROAD, EDAPPALLY NORTH, AIMS P.O., KOCHI-682 041.

BY SRI.RENJITH THAMPAN, SENIOR ADVOCATE. ADVS. SRI.V.M.KRISHNAKUMAR, SRI. M.V.ANANDAN, SRI.C.P. PRADEEP.

RESPONDENT(S):

PROF. K.V.THOMAS, KURUPPASSERIL HOUSE, THOPPUMPADY, KOCHI-682 005, PH: 98470 77150.

BY SRI.N.N. SUGUNAPALAN, SENIOR ADVOCATE. ADVS. SRI. S. SUJIN, SRI. K.L. JOSEPH.

THIS ELECTION PETITION HAVING COME UP FOR ADMISSION ON 01/12/2014, THE COURT ON 17/12/2014 DELIVERED THE FOLLOWING:

rs.

B. KEMAL PASHA, J.

Election Petition No.4 of 2014

Dated this the 17th day of December, 2014

JUDGMENT

The petitioner, who is a voter in the Ernakulam Parliamentary Constituency of the Union of India, is seeking a declaration that the election of the respondent from the Ernakulam Parliamentary Constituency to the House of People(Lok Sabha) declared on 16th May, 2014 is void under Section 100(1)(d)(iv) and Section 123(3) of the Representation of the People Act, 1951(hereinafter referred to as 'the Act').

2. The declaration sought for by the petitioner is on the basis of the following factual matrix: The respondent,

who was a sitting Member of Parliament of the Ernakulam Parliamentary Constituency in the 15th Lok Sabha, was also a Minister for the State in the Union Ministry. He belongs to the Indian National Congress(I) and his party contested the parliament election for the 16th Lok Sabha as a major partner of the United Democratic Front(U.D.F) in the State of Kerala. The respondent was re-nominated by the Indian National Congress(I) for contesting the 16th Lok Sabha election from Ernakulam Parliamentary Constituency.

- 3. Being a sitting Member of the Lok Sabha, during the term of the 15th Lok Sabha, the respondent had obtained letter heads from the Union of India. The letter head contains the name of the respondent as a Member of Parliament, with the National Emblem "Ashok Stambh". The said official letter head has to be used by such Member of Parliament in his official capacity only. The said letter head is printed with the money of the general public and the same is not expected to be made use of by such Member of Parliament for furthering his electoral prospects in the election. According to the petitioner, apart from the respondent herein, many other candidates had contested the election to the 16th Lok Sabha from the Ernakulam Parliamentary Constituency. The petitioner herein, received Annexure III notice/letter from the respondent herein dated 17.03.2014, during the peak of the election campaigning period. Annexure III was received by the petitioner by post in his residential address.
- 4. Through Annexure III, the respondent had forwarded an appeal that he should be elected, by claiming that he was responsible for the coming into force of the National Food Security Act, 2013 and also the all-round development of Ernakulam constituency. Annexure III is issued in the official letter head of the respondent which bears the National Emblem with the inscription "Satyamev Jayathe" in Hindi just below the National Emblem. Therefore, the respondent has committed corrupt practice defined under Section 123(3) of the Act. According to the petitioner, several of his friends had also received similar letters from the respondent. As per the directions of the Election Commission of India, a candidate, who publishes a letter/notice for campaigning in an election, should mention in the said notice the printer and publisher, and the number of copies of such notice printed, published and distributed. Annexure III does not contain any such details.
- 5. On getting the notice, the petitioner had immediately filed a complaint before the Chief Electoral Officer, Kerala as well as the Returning Officer of the Ernakulam Parliamentary Constituency. The complaint was forwarded by email as well as post. According to the petitioner, the copy of Annexure III and copy of the postal envelop were also scanned and sent along with the complaint. The copy of the said complaint is Annexure IV.
- 6. According to the petitioner, the respondent is also guilty of undue influence on the right of free exercise of franchise by voters who have received the aforesaid letter dated 17.03.2014, since the same was prepared in the official letter head of the Member of Parliament having National Emblem. When the results were announced, the respondent was declared as elected. The cause of action for the petition has arisen on 17.03.2014 and thereafter, within the jurisdiction of this Court.
- 7. The respondent has filed I.A.No. 5 of 2014 in this election petition for hearing the question of maintainability of the election petition by taking up the following contentions: An election petition can be summarily dismissed if it does not furnish the cause of action and the mandatory requirements of Section 83 of the Act. The election petition does not contain the necessary cause of action and also the material facts within the meaning of Section 83 of the Act. The election petition, annexures and the schedule are not in accordance with Order VI Rule 15 of the Code of Civil Procedure, 1908. The election petition is not properly verified. The petitioner has not filed an affidavit in support of his pleadings, fortifying the pleadings as contemplated under Order VI Rule 15 of the CPC. The affidavit filed by the petitioner under Section 83 of the Act is not in conformity with the affidavit in Form 25 prescribed by the Conduct of Elections Rules, 1961. The documents are not produced along with the election petition and the copies of the documents produced are not true copies of the originals.
- 8. It is also contended that Annexure III was not issued by the respondent and the signature in Annexure III is not that of the respondent. As a candidate the respondent has never made any appeal for the furtherance of the prospects of his election by making use of the National Emblem. The petitioner has not produced the alleged original envelop containing Annexure III, claimed to be received by him and therefore, the same is not admissible in evidence. The respondent had never requested for the printing of his letter head during the 15th Lok Sabha to the Lok Sabha Secretariat. The alleged actions described as corrupt practice would constitute a corrupt practice only when such acts were done after the respondent became a candidate. The petitioner has not disclosed any corrupt practice exercised by the respondent after the respondent became a candidate. The election petition does not disclose a cause of action and therefore, the election petition is liable to be rejected at the threshold. The election petition is not maintainable and therefore, the same is liable to be dismissed with costs.
- 9. Heard the learned Senior Counsel Sri.N.N.Sugunapalan for the respondent and the learned Senior Counsel Sri.Ranjith Thampan for the petitioner.
- 10. The learned Senior Counsel for the respondent has raised the following points challenging the maintainability of the election petition.
 - (1) The election petition is not properly verified as contemplated under the provisions of law.
- (2) The copies of the election petition and the affidavits served on the respondent are not attested as required by law.
 - (3) The affidavit under Section 83 of the Act is not in the Form prescribed.

- (4) The acts alleged as 'corrupt practices' on the part of the respondent are not 'corrupt practices' within the meaning of Section 123(3) of the Act, as the respondent was not a candidate within the meaning of Section 79(b) of the Act, at the time when the said acts were allegedly committed.
- (5) The documents based on corrupt practices were not produced along with the election petition and therefore, the election petition is defective within the meaning of Order VII Rule 14 of the Code of Civil Procedure, 1908.
- (6) The election petition does not disclose a cause of action in respect of the corrupt practices and therefore, the election petition is liable to be rejected.
- 11. Regarding the first point, it seems that when the learned Senior Counsel for the respondent has pointed out at first that the election petition is not properly verified within the meaning of Order VI Rule 15 of the CPC, the petitioner has filed an application seeking amendment of the verification portion of the election petition. The amendment was allowed and the same was incorporated. Therefore, presently, it cannot be said that the election petition is not properly verified.
- 12. Regarding the next point that copies served on the respondent are not attested as true copies within the meaning of Section 81(3) of the Act, the learned Senior Counsel for the petitioner has pointed out that all the copies issued at first were signed by the petitioner just as documents prepared in several parts. Even in the copies originally served at first, prior to the amendment, the signatures of the candidates were there as the same were affixed in originals. Therefore, it cannot be said that the copies were not properly attested within the meaning of Section 81(3) of the Act.
- 13. The learned Senior Counsel for the respondent has pointed out that when the amended copy of the election petition, after carrying out the amendment to the verification was served, the said copy was not attested as true copy by the petitioner. It seems that the said argument is too hyper technical. When the copies were served prior to the amendment and when the amendment has been sought for after serving the copy of the amendment application to the respondent, it was just a formality to issue a further amended copy after carrying out the amendment. Therefore, the argument that the copies are not properly attested, within the meaning of Section 81(3) of the Act, does not deserve serious consideration.
 - 14. Section 83 of the Act says:
 - "83. Contents of petition:-(1) An election petition -
 - (a) shall contain a concise statement of the material facts on which the petitioner relies;
 - (b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and
 - (c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:

[Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the

particulars thereof.]

- (2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.]"
- 15. In the case of corrupt practice in an election petition, the standard of proof required is not merely preponderance of probabilities; whereas, what is required is proof beyond reasonable doubt as in the case of proving a criminal or a quasi-criminal charge. In *R.P. Moidutty v. P.T. Kunju Mohammad and another*[(2000) 1 SCC 481] it was held in paragraph 40:

"It is basic to the law of elections and election petitions that in a democracy, the mandate of the people as expressed at the hustings must prevail and be respected by the Courts and that is why the election of a successful candidate is not to be set aside lightly. Heavy onus lies on the election petitioner seeking setting aside of the election of a successful candidate to make out a clear case for such relief both in the pleadings and at the trial. The mandate of the people is one as has been truly, freely and purely expressed. The electoral process in a democracy such as ours is too sacrosanct to be permitted to be polluted by corrupt practices. If the Court arrives at a finding of commission of corrupt practice by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent then the election of the returned candidate shall be declared to be void. The underlying principle is that corrupt practice having been committed, the

result of the election does not echo the true voice of the people. As the consequences flowing from the proof of corrupt practice at the election are serious, the onus of establishing commission of corrupt practice lies heavily on the person who alleges the same. The onus of proof is not discharged merely on preponderance of probabilities; the standard of proof required is akin to that of proving a criminal or a quasi-criminal charge. Clear cut evidence, wholly credible and reliable, is needed to prove beyond doubt the charge of corrupt practice. (See Ram Chandra Rai v. State of Madhya Pradesh, (1970) 3 SCC 647: (AIR 1971 SC 128); Manphul Singh v. Surinder Singh, AIR 1973 SC 2158; Rahim Khan v. Khurshid Ahmed, AIR 1975 SC 290; Bir Chandra Barman v. Anil Sarkar, AIR 1976 SC 603; Lakshmi Raman Acharya v. Chandan Singh, AIR 1977 SC 587; Amolak Chand Chhazad v. Bhagwandas Arya (Dead), AIR 1977 SC 813). The legislature has taken extra care to make special provision for pleadings in an election petition alleging corrupt practice. Under Section 83 of the Act ordinarily it would suffice if the election petition contains a concise statement of the material facts relied on by the petitioner, but in the case of corrupt practice the election petition must set forth full particulars thereof including as full a statement as possible of (i) the names of the parties alleged to have committed such corrupt practice, (ii) the date, and (iii) place of the commission of each such practice."

- 16. The aforesaid proposition has become trite law. Therefore, in an election petition alleging corrupt practice, the petitioner shall set forth full particulars of the corrupt practice. Normally, in an election petition, in which no corrupt practice is alleged, the petitioner is expected to make a concise statement of the material facts on which the petitioner relies. In the case of corrupt practice, not only the material facts but also full particulars of corrupt practice have to be set forth.
- 17. The corrupt practices alleged by the petitioner as against the respondent are contained in paragraphs 6 and 7 of the Election Petition, which are as follows:
 - "(6) A perusal of the said letter/notice dated 17.03.2014 would clearly show that the respondent has committed corrupt practice defined under Section 123(3) of the Representation of People Act, 1951. The aforesaid letter/notice dated 17.03.2014 is issued in the official letter head of the respondent, when he was the Member of Parliament in the 15th Lok Sabha. The said letter/notice dated 17.03.2014, bears the National Emblem with the inscription "Satyamev Jayathe" in Hindi just below the National Emblem, which is recognized as the National Emblem of India. Thus by issuing the letter/notice dated 17.03.2014, in the official letter head of the respondent bearing the National Emblem, the respondent had appealed by using the National Emblem for the furtherance of his prospect in the election of 16th Lok Sabha, which is clearly a corrupt practice under Section 123(3) of the Representation of People Act, 1951.
 - (7) Petitioner is an advocate practicing in the High Court of Kerala. On receipt of the said letter dated 17.03.2014 from the respondent herein, he had made enquiries with advocate friends who are practicing at Ernakulam. He came to know that the respondent had issued similar letters to a large section of advocates practicing in various courts within the Ernakulam parliamentary constituency as also other professionals and others residing within the Ernakulam parliamentary constituency."
- 18. Regarding the aforesaid allegations of corrupt practices, the learned Senior Counsel for the respondent has argued that the same can be termed as corrupt practices only if it were done when the respondent was a 'candidate'. According to the learned Senior Counsel for the respondent, even assuming for argument sake that the aforesaid notice dated 17.03.2014 was prepared and issued by the respondent(not admitted), it could not be corrupt practice within the meaning of Section 123(3) of the Act as the respondent was not a candidate as on 17.03.2014.
- 19. According to the learned Senior Counsel for the petitioner, the respondent was a candidate as on 17.03.2014. Section 79(b) has been retrospectively substituted by Act 40 of 1975. As per Section 79(b), "candidate" means a person who has been or claims to have been duly nominated as a candidate at any election. According to the learned Senior Counsel for the petitioner, when the respondent seems to have claimed as on 17.03.2014 that he was a candidate for the election, the respondent has to be treated as a candidate even on 17.03.2014 also. On that point the

learned Senior Counsel for the respondent has pointed out that even for claiming that he was a candidate, in order to become a "candidate" within the meaning of Section 79(b), the claim should have been that he was "duly nominated" as a candidate.

20. The question to be decided is whether the respondent was a "duly nominated candidate" or whether he could "claim to have been a duly nominated candidate" as on 17.03.2014. The learned Senior Counsel for the respondent has invited the attention of this Court to the decision of the Constitution Bench of the Apex Court in *Charan Lal Sahu v. Shri Fakruddin Ali Ahmed*[(1975) 4 SCC 832] and *Charan Lal Sahu v. Giani Zail Singh*[(1984) 1 SCC 390] relating to the provisions contained in Section 13(a) etc. of the Presidential and Vice-Presidential Elections Act,1952. Section 13(a) of the said Act defines 'candidate' as follows:

"'Candidate' means a person who has either been duly nominated as a candidate at a Presidential Election or a person who claims to have been duly nominated."

In those cases, the petitioners had violated the provisions contained in Section 5B of the Act and consequently their nomination papers were rejected by the Returning Officer. In *Charan Lal Sahu and another*, v. K. R. Narayanan (supra) it was held in paragraphs 11 to 14 as follows:

"Rejoinder affidavit of petitioner No. 1 has been filed in reply to the said Affidavit-in-Opposition of respondent No. 1. In the said rejoinder-affidavit the averments in the Affidavit-in-Opposition that the nomination paper of petitioner No. 1 was only subscribed by 7 proposers and the nomination paper of petitioner No. 2 was subscribed by 35 electors as proposers and 33 electors as seconders and that the nomination paper of petitioner No. 2 was not accompanied by the certified copy of the electoral roll have not been controverted. We must, therefore, proceed on the basis that the nomination papers of both the petitioners did not fulfil the requirements of Section 5B (1)(a) of the Act inasmuch as neither of these nomination papers was subscribed by the requisite number of fifty electors as proposers and fifty electors as seconders and that in so far as petitioner No. 1 is concerned, his nomination paper was not even subscribed by ten proposers but was subscribed by seven proposers only and further that the nomination paper of petitioner No. 2 was filed without complying with the requirements of Section 5B(2) of the Act.

- 12. Rules governing the election petition filed under Part III of the Act are contained in Order XXXIX of the Supreme Court Rules, 1966. Rule 34 of Order XXXIX provides that subject to the provisions of the said order or any special order or direction of the Court the procedure on an election petition shall follow, as nearly as may be, the procedure in proceedings before the Court in the exercise of its original jurisdiction. As regards proceedings in the exercise of the original jurisdiction of the Court Order XXIII Rule 6 provides that the plaint shall be rejected (a) where it does not disclose a cause of action, or (b) where the suit appears from the statement in the plaint to be barred by any law.
- 13. The preliminary objection raised by respondent No. 1 in the Affidavit-in-Opposition is that the petitioners are not entitled to maintain the Election petition in view of Section 14A of the Act since they were not candidates at the election. If the said preliminary objection is accepted, the election petition will be liable to be rejected as being barred by law, i.e., Section 14A of the Act. We have, therefore, heard the petitioners as well as the learned counsel for respondent No. 1 and the learned Attorney General of India on the said preliminary objection.
- 14. Section 14A of the Act relating to the presentation of the election petition provides as follows:-
 - "14A. (1) An Election petition calling in question an election may be presented on one or more of the grounds specified in sub-section (1) of Section 18 and Section 19 to the Supreme Court by any candidate at such election, or-
 - (i) in the case of Presidential election, by twenty or more electors joined together as petitioners;

- (ii) in the case of Vice-Presidential election, by ten or more electors joined together as petitioners.
- (2) Any such petition may be presented at any time after the date of publication of the declaration containing the name of the returned candidate at the election under Section 12, but not later than thirty days from the date of such declaration."

It has been held that a person can claim that he has been duly nominated as a candidate, only when he could show that his nomination paper conformed to the provisions of law. If his nomination is not valid, he cannot be a person duly nominated as a candidate and he cannot claim that he has been duly nominated as a candidate.

21. In Charan Lal Sahu and another, v. K. R. Narayanan (supra) it was held in paragraph 17:

"Shri Sorabjee, the learned Senior Counsel appearing for respondent No. 1, arguing in support of the preliminary objection, has urged that an election petition calling in question the Presidential election can either be filed by a candidate at such election or by twenty or more electors joined together as petitioners. In the present case the election petition has not been filed by twenty or more electors joined together as petitioners but has been filed by two petitioners only. It can be entertained only if either of the petitioners can be held to be a "candidate". Referring to the definition of "candidate" contained in S.13(a) of the Act, Shri Sorabjee has submitted that neither of the petitioners was a duly nominated candidate nor could he claim to have been duly nominated as a candidate at an election since the nomination papers submitted by both of them were not subscribed by fifty proposers and fifty seconders as required u/S.5B(1)(a) of the Act, as amended by the Amendment Act.

It was held that neither petitioners therein was a 'candidate' as the expression is defined in S.13(a) of the said Act, since neither of them had been duly nominated nor could they claim to have been nominated as a candidate in as much as the nomination papers filed by both of them did not comply with the mandatory requirements of other provisions. It was also held that on that view it must be held that neither of the petitioners had the *locus standi* to maintain the petition.

- 22. Section 79(b) of the Act and Section 13(a) of the Presidential and Vice-Presidential Elections Act, 1952 is *pari materia*. Therefore, the decisions in *Charan Lal Sahu v. Shri Fakruddin Ali Ahmed* (*supra*), *Charan Lal Sahu v. Giani Zail Singh* (*supra*) and *Charan Lal Sahu and another*, v. K. R. Narayanan(*supra*) relating to the term 'candidate' are squarely applicable to the term 'candidate' contained in section 79(b) of the Act also.
- 23. The decision in *Patngrao Kadam v. Prithviraj Sayajirao Yadav Deshmukh* [(2001) 3 SCC 594] also gives a clear indication that as and when a valid nomination has been accepted and the list of candidates whose valid nominations have been accepted has been published, such persons, whose names are in the list, are 'candidates' within the meaning of Section 79(b) of the Act. From that day onwards they can forward a valid claim that they are "duly nominated candidates". It was also held therein that even if such a candidate had withdrawn his nomination, even then he would be a candidate for the period from the date of acceptance of his valid nomination till the date on which it is withdrawn.
- 24. In answer to the aforesaid point raised by the learned Senior Counsel for the respondent, the learned Senior Counsel for the petitioner has relied on the decision in *S. Khader Sheriff v. Munnuswami* (AIR 1955 SC 775) wherein it was held:

"The question when a person becomes a candidate must be decided on the language of S. 79(b). Under that section, the candidature commences when the person begins to hold himself out as a prospective candidate. The determining factor therefore is the decision of the candidate himself, not the act of other persons or bodies adopting him as their candidate. When, therefore, a question arises under S.79 (b) whether a person had become a candidate at a given point of time, what has to be seen is whether at that time he had clearly and unambiguously declared his intention to stand as a candidate, so that it could be said of him that he held himself out as a prospective candidate. That he has merely formed an

intention to stand for election is not sufficient to make him a prospective candidate, because it is of the essence of the matter that he should hold himself out as a prospective candidate. That can only be if he communicates that intention to the outside world by declaration or conduct from which it could be inferred that he intends to stand as a candidate."

- 25. Based on the said decision in *Khader Sheriff* (*supra*), the learned Senior Counsel for the petitioner has taken the stand that through Annexure III the respondent herein had declared himself as the prospective candidate in the election and therefore, he had assumed the status of a candidate even at that point of time.
- 26. Controverting the said argument the learned Senior Counsel for the respondent has pointed out that the term "candidate" as it then stood in 1955 under Section 79 (b) of the Act was:

"'Candidate' means a person who has been or claims to have been duly nominated as a candidate at any election, and any such person shall be deemed to have been a candidate as from the time when, with the election in prospect, he began to hold himself out as a prospective candidate."

27. The said definition of candidate as it then stood in Section 79(b) of the Act was amended through Act 43 of 1956, with effect from 28.08.1956 as follows:

"candidate" means a person who has been or claims to have been duly nominated as a candidate at any election."

Therefore, there is substantial deviation from the earlier definition of the term 'candidate', after the aforesaid amendment.

- 28. The deeming provision contained in the earlier definition has been taken away through the aforesaid amendment. Therefore, the earlier definition prior to amendment that, with the election in prospect, if a person began to hold himself out as prospective candidate, he could be treated as a candidate, has been taken away through the amendment. The amendment itself is self-speaking that, after the amendment there is no such deeming provision and that even if a person declares himself as a prospective candidate, he cannot be treated as a candidate within the meaning of Section 79(b) of the Act until his nomination is found to be valid and acceptable.
- 29. Annexure C2 shows that the election was declared on 05.03.2014 and the notification was also issued on that day. 22.03.2014 was fixed as the last date for filing nominations. The scrutiny of nomination was schedule on 24.03.2014. The last date for withdrawal of candidature was on 26.03.2014. Therefore, a person can become a candidate only in the scrutiny of nomination. On 24.03.2014 his nomination was found to be valid. Therefore, prior to 24.03.2014 nobody could claim that he was 'a duly nominated candidate'. Even if there was any such claim by the respondent that he was a prospective candidate prior to 24.03.2014, the said declaration by itself could not make himself a candidate within the meaning of Section 79(b) of the Act.
- 30. The trump card of the allegation of corrupt practice as against the respondent herein alleged by the petitioner is Annexure III letter dated 17.03.2014. Regarding the receipt of Annexure III, the specific averment of the petitioner is that he received the said notice/letter from the respondent herein dated 17.03.2014, 'during the peak of election campaigning period'. He has not stated the date on which he had received Annexure III. The terms 'during the peak of election campaigning period' are too vague, which can ill afford to bring out a specific cause of action for maintaining an allegation of corrupt practice. Apart from stating that he had received the same during the peak of election campaigning period, the specific date on which he has received it has not been shown. In paragraph 12 of the Election Petition, he has specifically shown the cause of action as '17.03.2014', and of course, as usual in a plaint relating to civil cases he has shown 'and thereafter' also.
- 31. In an election petition for sustaining an allegation of corrupt practice, the petitioner has to show that the said corrupt practice was done when the respondent was a candidate. From the discussions made above, it is evident that as on 17.03.2014, the respondent was not a candidate and the respondent could not claim that he was a candidate. The scrutiny of nomination was on 24.03.2014 and therefore, the respondent could not have claimed on 17.03.2014 that he was a candidate within the meaning of Section 79(b) of the Act. The petitioner ought to have made it clear whether he had received Annexure III from the respondent when the respondent was a candidate or from the agent of the candidate or from any other person with the consent of the candidate or his election agent. Therefore, the election petition does not reveal a valid cause of action for sustaining an allegation of "corrupt practice" within the meaning of Section 123(3) of the Act.
- 32. The petitioner ought to have produced the postal envelop in which he had allegedly received Annexure III. The petitioner has not produced the said postal envelop to show the date of postal endorsement on the said cover in order to ascertain whether the same was sent to him on any day after 24.03.2014. The learned Senior Counsel for the petitioner has attempted to argue that the said cover was sent to the Election Commission. The election petition does not show that

the said postal envelop was sent to the Chief Electoral Officer or Returning Officer or the Election Commission. In paragraph 8 of the election petition he has shown that the copy of Annexure III and copy of postal envelop were also scanned and sent along with the complaint forwarded to the Chief Electoral Officer, Kerala, as well as the Returning Officer of Ernakulam Parliamentary Constituency. He has not stated anywhere that the original postal envelop was sent to any of those authorities. The learned Senior Counsel for the petitioner has taken a stand that the petitioner may be able to produce the said postal envelop during the trial of the election petition. When the postal envelop is the crux of the matter, the petitioner ought to have produced the same along with the election petition within the meaning of Order VII Rule 14 of the Code of Civil Procedure, 1908. If the said document was with the petitioner, the petitioner ought to have produced the same along with the election petition under Order VII Rule 14(1) of the Code. Whether any such document was not in the possession or power of the petitioner, he ought to have stated as to the person in whose possession or power it was, at the time of filing the election petition. Therefore, the election petition is bad under Order VII Rule 14(1) and (2) of the Code also, as the postal envelop has not been produced along with the election petition.

- 33. It cannot be said that the petitioner was unaware of the consequence of the non production of the postal envelop of Annexure III along with the Election Petition. It seems that the petitioner has produced Annexure VIII letter which is a verbatim reproduction of Annexure III and the postal envelop as Annexure IX allegedly in which Annexure VIII was enclosed. According to the petitioner, Annexure VIII contained in Annexure IX was received by one Sri.P.N.Chandrababu. Had such a letter been received, the petitioner ought to have produced those documents along with the election petition. Apart from the above, it seems that nobody can say that Annexure IX was the cover in which the said Chandrababu had allegedly received Annexure VIII.
- 34. From the discussions made above, it has clearly come out that the petitioner has failed to set forth the full particulars of the "corrupt practice" which the petitioner has alleged, within the meaning of Section 83(1)(b) of the Act. No specific cause of action regarding such "corrupt practice" has been stated in the election petition. When the election petition does not reveal any cause of action relating to the "corrupt practice", the election petition is liable to be rejected. Further, when the petitioner has failed to show the full particulars of the corrupt practice and has failed to produce necessary documents along with the election petition, and when he has failed to make any allegation of corrupt practice within the meaning of Section 123(3), that it was done by the respondent when he was a candidate, the election petition is only to be dismissed.

In the result, this election petition fails and the same is dismissed with costs.

Sd/- B. KEMAL PASHA, (JUDGE)

Registrar (Judicial)

[No. 82/KL-HP/4/2014]

By Order, TAPAS KUMAR, Sr. Principal Secy.